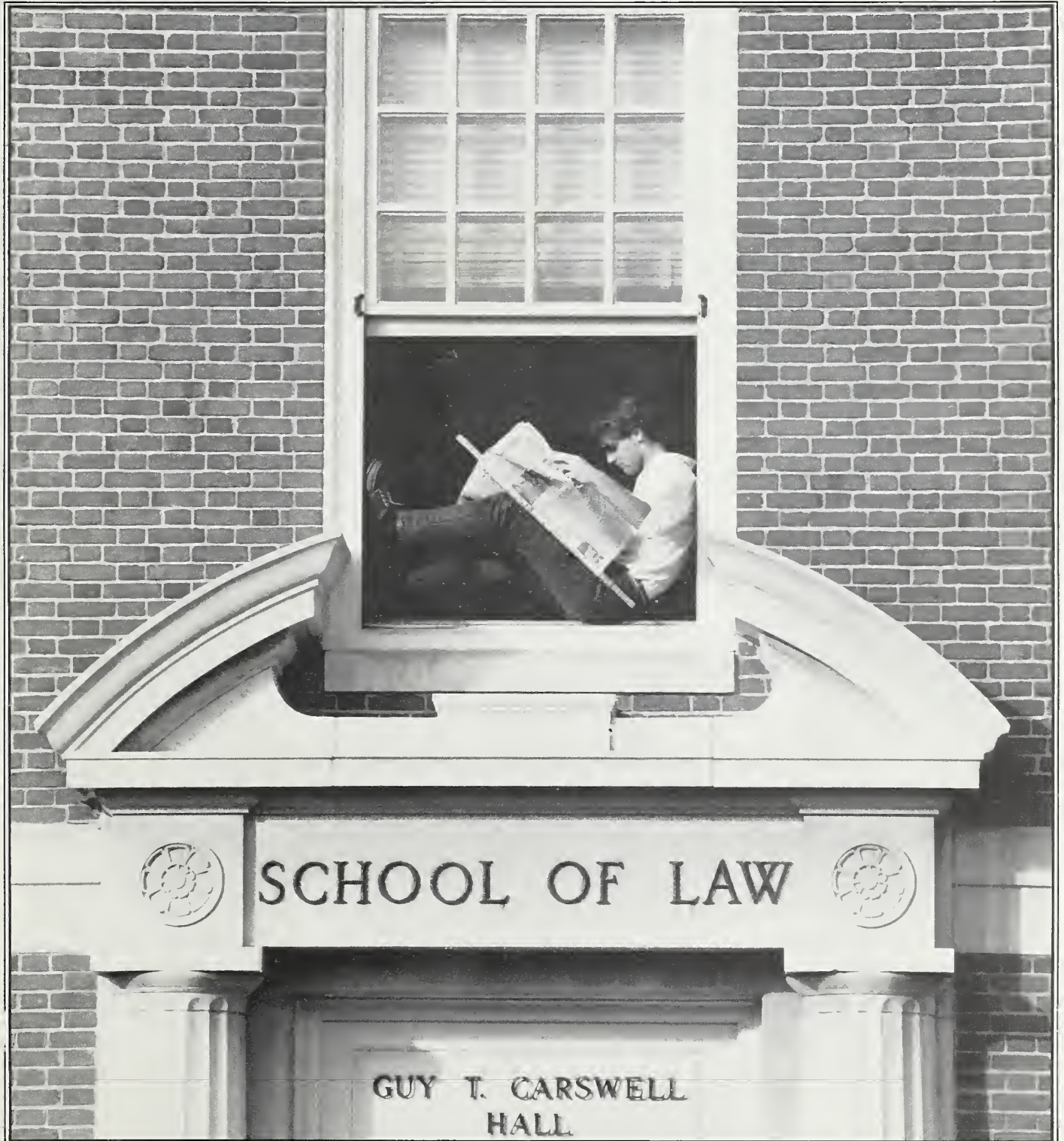


# Wake Forest JURIST

*SPRING 1982 Vol. 12, No. 2*



# Wake Forest Continuing Legal Education (WF-CLE)

## Quality Publications and Programs

The strength of the Wake Forest Continuing Legal Education Program continues to be reflected in its Institutes and its publications. During WF-CLE's first two years, it has provided the North Carolina attorney a comprehensive series of practice handbooks and programs. The practice handbook series covers the substantive law in North Carolina in key transactional areas of concern to both general and specialist practitioners. For those of you not familiar with our handbooks, we urge you to compare them with other CLE publications. We are sure you will find them to be unique, useful and of the highest quality. The Family Law Handbook is in use by the majority of North Carolina law offices. Trends indicate that the Business Practice, Tort Practice, and Real Property Handbooks will also enjoy this wide acceptance. Practice handbooks currently available include:

- N.C. Real Property Practice Handbook (640 pages; published March 1982)
- N.C. Tort Practice Handbook (489 pages; published November 1981)
- N.C. Business Practice Handbook (639 pages; published March 1981)
- N.C. Family Law Handbook (354 pages; published November 1980)

Thus, the Wake Forest Practice handbook series is in place, brings improved CLE publications to North Carolina at reasonable prices, and will be kept current through periodic supplements.

## "The Practice Manual Series"

The N.C. Family Law Practice 1982 Institute marked the completion of the first integrated transactional WF-CLE package available to the practitioners of this state. This 1982 Institute featured a substantive Supplement to the 1980 Handbook, and a Family Law Practice Manual which provides complementary forms, systems, and an administrative movement tool to the Handbook. The Manual contains procedures, forms, practical tips and checklists to expedite the handling of family law cases. The Handbook, Supplement, and Manual form a transactional package which enables the attorney to handle and "move" his cases with greater efficiency, less cost, and less likelihood of error. This package is now in place and available to you.

This "package" concept will be implemented in the areas of Business Practice, Tort Practice, and Real Property Practice, bringing to the state both a practice handbook and practice manual series, with supplements, in the major fee-producing transactional areas.

## Upcoming Quality Programs

WF-CLE continues to provide quality programs and publications in other selected areas. The Annual Review Institute, favorably received in the past, will again be offered this year in four locations across the state. Our fall programs are listed below; see you at WF-CLE!

### WF-CLE Fall 1982 Programs

DATE	CITY	TOPIC
Sept. 10-11	Asheville	Third Annual Review, N.C. 1982
Sept. 17-18	Charlotte	Third Annual Review, N.C. 1982
Sept. 24-25	Raleigh	Third Annual Review, N.C. 1982
Oct. 8-9	Winston-Salem	Third Annual Review, N.C. 1982
Oct. 15-16	Winston-Salem	N.C. Civil Trial Practice
Nov. 12-13	Winston-Salem	N.C. Product Liability and Tort Update

*For further information on the above programs and publications, contact the WF-CLE office at P.O. Box 7206, Reynolda Station, Winston-Salem, NC 27109-7206 —(919) 761-5560.*



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## STATEMENT OF PURPOSE AND POLICY

The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the *Jurist* seeks to provide a forum for the creative talents of students, faculty and its alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

All rights to reproduction of any material printed in the *Jurist* are reserved to the magazine. Permission for adaption of the content for any other publication must be granted in writing from the Editor-in-Chief.



## SBA Officers for 1982-83:

(Left to Right)  
 Nancy Connolley, treasurer;  
 Wendy Hoge, vice-president;  
 Kim Going, president;  
 Laura Broughton, secretary

# Dean's Letter

The Wake Forest Law School has traditionally maintained the closest of ties with the North Carolina State Bar and the North Carolina Bar Association. In recent years we have made every effort to strengthen those ties and to broaden our areas of cooperation. During the past few months, however, our relationship with the Bar Association unfortunately has been strained a bit by a problem which has arisen involving our CLE programs. Briefly, let me describe the problem and then seek your counsel and advice.

When I returned to Wake Forest almost three years ago one of the first things we did was to try to identify ways in which the Law School might respond to the tremendous support which it has always received from its alumni and the North Carolina legal community in ways which would at the same time enhance the image of the school as an alert, modern, profession-oriented organization. CLE surfaced quickly as an obvious possibility. We did a fairly careful survey of our own limited resources and took a good look at CLE in North Carolina. We already knew that North Carolina lawyers, through the North Carolina Bar Foundation, had access to some of the better CLE programs in the country at some of the lowest prices in the country. We were somewhat surprised to learn that North Carolina was providing fewer CLE hours per lawyer than most other states, a condition which still exists today despite rapidly expanding numbers of CLE offerings.

In this process we discovered a number of types of CLE programming which were apparently both useful and popular in other states but which were not then being attempted in North Carolina. We picked out two major areas to which our resources were most readily adaptable and tentatively designed a limited program in those areas. Some of this programming, in our opinion, could more effectively be handled by the firing line knowledge, and the practical approach of the practicing bar. Other parts of it appeared to have a greater need for the research personnel and library resources of the law school. We decided to attempt to design a limited program operating primarily in those areas where law school resources are most useful, where we could provide a different kind of service from that already being provided by the Bar Foundation. We also decided that we would maintain the integrity of the existing pricing system, and would operate on



essentially a non-profit basis. Our motives and our rewards would lie in helping to raise the levels of professional performance among North Carolina lawyers, and in the development of increased good will and prestige for the Law School. We talked extensively about that proposed program with alumni and members of the bar, and especially with Bar Association officials, and were met with almost universal encouragement. From the outset we have worked

*"We were somewhat surprised to learn that North Carolina was providing fewer CLE hours per lawyer than most other states. . ."*

hard to promote the orderly development of CLE in North Carolina, if possible under the control of the Bar Association, with the clear object of providing the best, the most effective, and the most economical educational program possible for North Carolina lawyers. I spent a good deal of my personal time and effort helping Dewey Wells and Frank Wyatt develop an operating agreement among all of the CLE producers in the State which was designed to avoid duplication wherever possible and to

provide North Carolina lawyers with advance notice of all upcoming CLE programs. We have done our best to work within the letter and the spirit of that agreement, and with the exception of an unfortunate misunderstanding with the leaders of the new Real Property Section, have had little or no problem with it.

The CLE program which Wake Forest has developed has three major components. The first of these is a series of practice handbooks and practice manuals in a half-dozen subject matter areas. There is a significant difference in kind between these books and the materials usually provided for a CLE program. These books provide comprehensive, in-depth coverage of the North Carolina law in an entire subject matter area, carefully organized and indexed, much like the "services," written with a practice orientation. They will be kept up to date on a regular basis, and will provide North Carolina lawyers with extremely valuable basic research tools. It would be extremely difficult for the Bar Association to provide the research and editorial capabilities required to produce this type of publication without a substantial increase in its editorial and production staff. In point of fact Wake Forest did not reach a final decision to proceed with the development of this handbook and practice manual series until the CLE Committee of the Bar Association decided in September



of 1981 not to go into the production of a series of practice manuals. (The Committee did indicate at that time that it might well recommend publication of an individual manual or handbook as a need should arise.) CLE institutes have been planned to introduce each new handbook and practice manual and each substantial updating revision, and have been inserted in the CLE calendar under the terms of the operating agreement.

One of the handbooks in this series, the Real Property Handbook, and the Institute designed to introduce the Handbook, apparently raised serious concerns among the leadership of the newly organized Real Property Section. They informed us that in their opinion the lawyers of North Carolina did not need or want either our Handbook or Institute, and suggested that we cancel the Institute and scratch the Handbook. We were somewhat taken aback, since our Institute had been planned (and placed on the calendar) far in advance, but we did re-examine our position to determine whether cancellation to accommodate the Section might in fact be feasible. We quickly discovered that the production of the Handbook had already proceeded to a point where cancellation would result in a substantial loss, and we gave that information to the Section. We also explained that the Real Property Handbook really is a different, more sophisticated, and far more useful publication than the materials normally produced for a CLE institute, and pointed out that the Section was not equipped to produce a handbook of this nature and the Bar Association had indicated that it had no intention to do so, at least in the foreseeable future. We are firmly convinced that our series of practice manuals and handbooks provide a valuable service to the lawyers of North Carolina, and that a serious disservice would result from their discontinuance unless and until the Bar Association is ready to take them over. (At one point we offered to work jointly with the Bar Association in a cooperative effort with Wake Forest producing the manuals and handbooks and the Bar Association putting on the introductory institutes. For reasons which are readily apparent the Bar Association did not feel that this type of joint sponsorship was feasible.)

The second major component of our program is the Annual Review of North Carolina law. The Review may appear to bear some resemblance to the General

Practice Update, but it differs in much the same way as the handbooks differ from regular institute materials. It is a complete overview of all of the changes in every area of North Carolina law during the prior year. As part of the Review package, participants receive a desk reference book containing all of the major changes in the law of North Carolina in an indexed, usable format. Once again it is something which is easy for a law school to put together, since every professor must keep up with developments in his or her own fields and has student research assistance to help him do it. Reviews of this nature have proven to be extremely popular in many other states, and ours has been received with a large measure of enthusiasm.

The third part of our program consists of institutes which appear to have considerable value but which have not been done for some time and do not appear to be on anyone's agenda, and programs for which we seem to possess some unique and unusual expertise. We only produce a few of these

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### *"Should the Wake Forest Law School remain in CLE?"*

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each year, and they cause no problems for anyone who pays any attention to the calendar.

This is our program. We are not that big, and we have no plans to expand. We have had no serious problems with the regular curriculum of the Bar Association, and will continue to do everything in our power to continue to avoid them. We have had one serious problem with one of the sections, but only because we happened to have a program in place close to the time they wished to plan one of their own, and they were not aware of the major difference in the type of program materials involved.

As new Sections are created, however, and as existing sections become more deeply involved in CLE it will become more and more difficult to avoid conflict and duplication, even with the best of good faith on all sides. When we planned our CLE program three years ago Wake Forest was producing four or five institutes each year, and the Bar Association was doing about fifteen. We now put on about ten each year, but the Bar Association has mushroomed to more than forty, not including section programs. North Carolina

lawyers have a wide variety of programs to choose from in a wide range of locations. Many of the lawyers have an uneasy feeling that there may be too much CLE available today, but the facts do not appear to support that feeling at this point. The quality of CLE programs and materials in North Carolina has continued to improve. Costs have remained relatively low. Attendance has continued to rise. Most programs at least pay their own way. In my judgment CLE in North Carolina today is very healthy, indeed.

The question upon which I seek your advice and counsel is a simple one. Should the Wake Forest Law School remain in CLE? Are we merely duplicating what the Bar Association provides, or are we providing lawyers with valuable tools which are not available elsewhere? Some Bar Association officials apparently believe that in North Carolina at least the function of the law schools should be limited to the education of law students, and the continuing education of the profession should be the function of the Bar Association. Is this an effective division of educational resources? Should we continue to produce our practice handbook and practice manual series? Is our CLE program helping or hurting the profession? Is our CLE program brightening or tarnishing the image of the Wake Forest Law School?

I will very much appreciate your thoughts and comments on these and related questions. Talk to me in person or on the phone if you have the opportunity. This is your law school, and your stake in it is every bit as big as ours. Your perspective in this particular situation is unique, and we need the benefit of your wisdom and your considered judgment.

# Editor's Corner

In this issue we feature the activities at the law school which were omitted from our fall magazine and the update on alumni which we promised. In the latter category, you will note three distinct sections, plus a special feature. They include classnotes, new addresses of alumni who contacted our staff, and the addresses of the 1981 graduates.

The special feature was researched and written by the 1982-83 editor of the *Jurist*. He is Drew Williamson, from Laurinburg, North Carolina. Drew is a graduate of the University of North Carolina at Chapel Hill where he majored in journalism. Between the two of us, we developed the idea of a special story on Wake Forest School of Law alumni with sons or daughters who had studied or were presently enrolled in law school at Wake Forest. This list grew so long that Drew, with regret, limited his interviews to alumni with children now at the school. If you missed his cutoff, send the staff a note so that your family's loyalty to Wake Forest can be acknowledged.

We have not included much copy from Law Day, 1982, choosing instead to increase the number of photographs. The banquet that capped a successful week of activities was well attended. The law school was so pleased that Chief Justice Branch accepted the SBA's invitation to speak and were especially delighted that he and Mrs. Branch attended the party held in honor of the graduating class at Bermuda Run prior to the dinner at Ramada Inn, giving many of us a chance to meet them both.

There were two very serious omissions in the fall issue. First, we neglected to include Professor Boyce Covington as advisor to this publication. His name should have appeared on the masthead along with the names of the staff. Second, we omitted Professor Tom Roberts and Professor Covington in the list of faculty which began on page 29. Although I apologized to them personally, I note these omissions for the record and ask that you add their names to our fall issue which I hope is now on the shelf.

As a third year student I have spent some time image gathering this year. Having departed two alma maters several decades ago (I am one of the second career crowd in the law school) I am particularly sensitive to the need to select carefully material of which memories are made to take with me. This knowledge coupled with the need for exercise and the anticipation of future

quiet moments has sent me on morning treks from Faculty Drive across campus to the law school building.

Sometimes my morning stroll was just at sunrise. On crisp clear cold dawns the Wake Forest campus was a vague outline against a black sky streaked with red promises of a new day. Gradually, as the sun rose it cast a white glow over these surroundings with enough light to create silhouettes of individual buildings. On my left, I watched with fascination the progress on the Scales Fine Arts Building until it grew to its present size. Early in the morning the sunlight forced shadows across its walls, which compliment the geometrical perfection of its design.

As I continued my morning stroll, to the northwest I acknowledged the prominent symbol of Wake Forest, the Wait Chapel steeple. Although it is impressive against the morning sky, in the evening spotlighted against a black curtain it is magnificent. Just before entering the law school, I frequently paused before the east side of Reynolds Hall. I would count the terraces and applaud the architect who could make something which is so substantial, so beautiful.

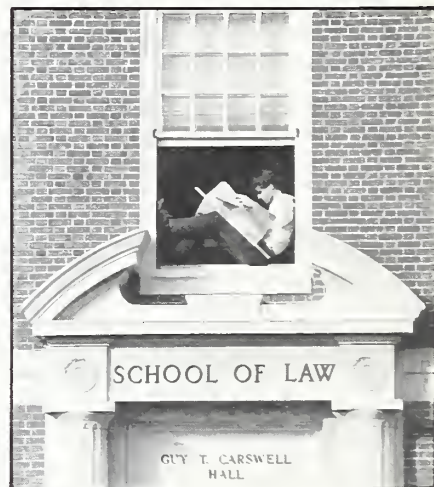
These images I have honed to my perfection. However, it wasn't until I stopped by Wait Chapel one morning and went inside that I recognized the spirituality of what Wake Forest will always be to me. I read from two plaques. On one was inscribed, "Samuel Wait, president, Wake Forest College, 1834-1845, died Wake Forest, North Carolina, July 28, 1867." The other stated, "William, Crenshaw, first treasurer of Wake Forest College, by Major J. M. Crenshaw, the first student to enter at opening of the College in February, 1834." I felt a sense of oneness with them and those others remembered there. I would become like them part of the spiritual crusade of which Justice Stacy wrote. I quote from a familiar and my favorite part of his opinion: "Wake Forest College has had a long and honorable career and whether it nestles in a forest of Wake or stands on a knoll in Forsyth, its mission will remain a quest for truth and a crusade for simple right." Reynolds Foundation, Inc. v. Trustees of Wake Forest College, 227 N.C. 500, 42 S.E. 2d 910 (1947).

Therefore, although I will take mental pictures of buildings with me, I will take, as will others who depart this spring from Wake Forest, part of Wake Forest with me and make a home for Wake Forest where I am. The quest for truth was begun here but

the crusade for right in the name of Wake Forest will continue where we are.

I hope this magazine has brought some of you back to Wake Forest and through its contents has in a small way renewed your interest in this law school. It is a place to be proud of being a part of. It is with a sense of pride that I along with the third year members of this staff join you as alumni of Wake Forest School of Law.

Allene C. Keith  
Editor



COVER: First year student Wayne Johnson spends a study break at the second floor window, a favorite spot for many students with too little time to enjoy a break outside. photo by Bernard J. Carpenter ©1982



## Potpourri of Achievements and Activities

*Extra-curricular scholastic teams take national awards; Intramural teams excel; and other student groups maintain active schedules.*

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### Moot Court

The Moot Court Board is extremely proud of its accomplishments during the 1981-82 academic year. The success of the Board ranged from the Edwin M. Stanley Competition which brought together the most impressive panel of judges ever assembled at the law school to the overwhelming popularity of the Legal Bibliography Competition which attracted more than 100 first year students. In a year in which the Board grew to its largest membership, (over 70 members) the contributions of individual members was never more significant.



Ricky Silver congratulates John Madden winner of the Edwin M. Stanley Competition.

### The Officers

Fred W. DeVore and Charles E. Frye were the Chief Justice and Associate Chief Justice of the 1981-82 Board, respectively. Charles Frye was chairperson of the Team Selection Committee which had the difficult task of choosing individuals to represent Wake Forest in nine inter-school competitions.

Andy Carmen served as Stanley Cup Chairperson and provided the leadership needed to continue the tradition of superior appellate advocacy exemplified by ten years of the Edwin M. Stanley Competition. Bargery Williams co-ordinated the Standard Problem and developed a problem and bench brief on Public School Searches which proved to be an interesting challenge to the participants.

Kathryn Feagins, chairperson of the Legal Bibliography Competition, assumed the responsibility of scheduling and organizing two competitions at once, which was mandated by the large number of participants. Sally Womack Smith and Tommy Joe Payne were co-chairpersons of the Bench Brief Committee.

In the spring, the Board decided to undertake a project to publish outstanding Wake Forest Bench Briefs and problems for distribution to other law schools. The project is still in the planning stages under the leadership of 2-L Sue Williams.

In March, the Board elected John Madden (Princeton, N.J.) as Chief Justice and Ricky Silver (Asheville, N.C.) as Associate Chief Justice for the 1982-83 academic year.

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### Edwin M. Stanley Competition

Each fall, the Law School Moot Court Board conducts the Edwin M. Stanley Competition, a competition in appellate advocacy open to second and third year students. This year's Competition began in mid-September and the final round arguments were held on November 20, 1981 in the law school courtroom. Forty-six students participated and eighteen were selected for Moot Court Board membership.

The problem used in the Competition was based on an actual North Carolina criminal case decided by the Fourth Circuit Court of Appeals. At issue was: (1) Whether there was an unconstitutional burden placed on the defendant to prove self-defense; and, (2) Whether the defendant's failure to raise a constitutional objection at trial or on appeal barred him from raising it in a habeas corpus proceeding. The Fourth Circuit decided both issues against the defendant and at this time, the United States Supreme Court is deciding a Sixth Circuit case which raises the very same question as the Competition's second issue.

Over sixty local attorneys and judges served as judges for the oral arguments. The two finalists in the Competition were Ricky Silver and John Madden. They argued in front of 200 spectators and before an impressive panel of judges which

# Law School News and Features

included:

The Honorable James C. Hill, Senior Circuit Judge of the U.S. Court of Appeals for the Eleventh Circuit;

The Honorable Francis D. Murnaghan, Jr., U.S. Court of Appeals Judge for the Fourth Circuit;

The Honorable Sam J. Ervin, III, U.S. Court of Appeals Judge for the Fourth Circuit

The Honorable James G. Exum,

Associate Justice of the N.C. Supreme Court; and

The Honorable Richard C. Erwin, U.S. District Court Judge for the Middle District of North Carolina.

The courtroom had standing room only for the final round with the judge who had first heard the case in attendance. Following the argument a reception for the participants, the panel and the Board was held at the Regency Hyatt.



**Above:** Members of the Wake Forest team at the Craver Competition at Chapel Hill included **Jan Puckett** ('82), **Marty Anton** (83), and **Michelle Bartolli** ('83).

**Below:** The tax team advanced to the quarter finals at Buffalo. The members shown here are **Kurt Landquist**, **Christi Myatt**, and **Dan Perry**.





## Extramural Competition Teams

During the 1981-82 academic year, the Board sponsored teams in eight extramural moot court competitions. For the first time the Board elected to participate both in the National Appellate Advocacy Competition (NAAC), sponsored by the Law Student Division of the A.B.A. and in the National Administration Law Competition. Linda King Appleby, Kenneth Bell and Gregory Edwards represented Wake Forest in the Southern Region of the NAAC to be held at the University of South Carolina on April 1-2. Professor William Dowdy served as team advisor.

The Administrative Law team of Kimberly Ledford and Philip Baker competed at the University of Dayton on March 25-27, 1982 with Professor James E. Bond as the advisor. The competition involved the power of the President to provide guide lines to an executive agency for promulgating regulations absent Congressional prohibition and whether the Administrator of the Federal Aviation Administration is disqualified from commenting upon the subject matter of the proposed regulations.

The Robert F. Wagner National Labor Law Moot Court Competition was held at New York University Law School in Manhattan March 25, 1982. The team members were Anthony Alfano, Lawrence Fine and Beverly Moore with Professor Ken Zick as advisor. The competition probed contemporary problems surrounding collective bargaining.

The Board sponsored two teams in the National Moot Court Competition held in

November of 1981 in Williamsburg, Virginia. The teams consisted of Pam Keris, Lewis Gardner and Robin Cutson along with Don Fox, Tommy Joe Payne and Margaret Shea. The extent of the right to publicity under the First Amendment was the primary issue in addition to an Erie doctrine procedural issue. Professor Zick advised both teams.

The William and Mary Competition was also held in Williamsburg, Virginia and committee members Alexis Pearce, Michael Doran and Hamilton DeSaussure Jr. were the Wake Forest representatives. The competition, held February 26-27, 1982, concerned the use of discovery to obtain membership lists of groups engaged in First Amendment activity and the applicability of the **Younger** abstention doctrine in a 1983 action. Professor Logan was the advisor for this team.

The Jessup Cup International Law Moot Court Competition for the Southern Region was held in Nashville, Tennessee on March 5-6, 1982 by Vanderbilt University. The team consisted of Allison Brown, Urs Gsteiger, David Lennon, Ricky Silver and Bargery Williams with Professor George Walker as advisor. David Lennon and Ricky Silver placed fourth and seventh respectively among the 32 oralists. The issue concerned violations of human rights occurring in a civil war and the extent of international liability for the resulting mass migration of refugees.

The Albert R. Mugel Moot Court Tax Competition was sponsored by the State

University of New York at Buffalo on March 5-6, 1982. The Wake Forest team of Kurt E. Lindquist II, Christine L. Myatt and Daniel W. Perry were Quarter finalists and also wrote the Best Brief for respondents. This brief was runner-up for Best Brief overall in a field of 32 competitors. The issue involved the taxability of intra-family interest-free loan transactions. Professor Joel S. Newman advised the team.

Wake Forest again made a strong showing in the Craven Moot Court Competition sponsored by the University of North Carolina at Chapel Hill, March 3-6, 1982. Michele Bartoli, Janet Puckett and Martin Anton were the representatives and were advised by Professor James E. Bond. The team will receive a Brief Award for their brief which ranked among the top ten of fifty-two team submissions. The issue involved whether the U.S. Attorney General may challenge the constitutionality of the Federal Speedy Trial Act and whether the Act violated the separation of powers doctrine.

## 1st Year Competition

This year there are 102 first year students participating in the Moot Court Competition. Due to such a large turn-out, the competition was divided into two sections, each with a different problem. Each participant wrote a brief and argued twice, once on-brief and once off-brief. The top eight participants in each section were matched in single-elimination competitions until a winner was determined.

The first problem dealt with whether foster parents have a constitutionally protected interest in a foster child and what procedures of removing children from foster homes meet with due process. The second problem centered around the first amendment rights of an adult member of a religious cult when his parents attempt to use a conservatorship proceeding to obtain his release from that cult. Both problems were to be dealt with as if the briefs and arguments were to the Supreme Court of the United States.

The final arguments were April 8 (problem A) and 9 (problem B) at 3:30 in the courtroom.

**Below:** Members of the Wake Forest team in the Robert F. Wagner National Labor Law Competition included **Larry Fine** ('82), **Beverly Moore** ('83), and **Tony Alfano** ('82).



## Student Trial Bar

Recognizing that the art of trial advocacy is one of the most important and visible skills of a lawyer, the Student Trial Bar was formed to promote the study of trial practice. In furtherance of this goal, the Student Trial Bar has increased its efforts to promote trial advocacy as a major part of legal education.

In the Fall of 1981 the Trial Bar sponsored an introductory exercise for first year students. The exercise consisted of mock trial exercises in *voir dire*, opening statements and closing arguments along with lectures by Dean Leon Corbett and Professor Charles Taylor. Participants were judged and critiqued by third year members of the Trial Bar and several were invited to join the organization based on their performance. Dan Keuhnart and Bob Ziegler were the co-chairpersons of the Exercise Committee.

The Trial Bar also sponsored several speakers this fall which were open to the entire local legal community. Among these speakers was Dr. Ernest Wrightsman, a social psychologist from the University of Kansas, who spoke on the psychology of jury selection and jury behavior. He concluded that opening statements, a relatively new trial device in North Carolina, could be one of the most important persuasive trial techniques available to trial attorneys. David C. Spivey was the Chairperson of the Speakers Committee.

This spring, the law school and the Student Trial Bar hosted the Region III Tournament of the A.B.A. National Trial Competition. Wake Forest competed against teams from Campbell University, North Carolina Central University, Washington & Lee University and the University of South Carolina. For the second consecutive year, Wake Forest won this region and represented the region in Houston, Texas for the National Finals. The winning team of David C. Spivey and W. Robert Turner represented Wake Forest in Houston on March 26-29. Tommy J. Payne and Rebecca J. Engle of Wake Forest were runners-up. Professor Rhoda Billings and Dean Leon Corbett served as team advisors.

## Zeliff Competition

The Second Annual Zeliff Trial Competition was conducted during March to select the Outstanding Trial Advocates of the second and third year classes. The competition is in honor of Cynthia J. Zeliff, a 1973 graduate of Wake Forest who practiced law in Raleigh, N.C. before her tragic death in 1978. Her family sponsors this competition and other activities in the law school through a fund for trial advocacy. The competitions, a series of mini-trials, are judged and critiqued by local attorneys and judges. The Honorable Sam Ervin of the Fourth Circuit Court of Appeals presided over the championship round April 16, won by Pat Cole, 3-L.

The Student Trial Bar relies on the help and contributions of local alumni for the



Pat Cole winner of the Zeliff Competition is shown here with Mike Flannerly, runner up in the competition.

success of its activities. Alumni who wish to participate in future trial bar activities are encouraged to contact Dean Leon Corbett, the Trial Bar sponsor.

## National Competition

Wake Forest University School of Law served as host of Region III-B of the National Trial Advocacy Competition, sponsored by the Texas Young Lawyer's Association, the American College of Trial Lawyers, the American Bar Association Litigation Division, the American Bar Association Young Lawyers Division and American Academy of Trial Lawyers. Washington and Lee, the University of South Carolina, North Carolina Central University, Campbell University, and Wake Forest University were each represented by two teams. The Wake Forest team of David Spivey and Rob Turner finished in the regional competition with the Wake Forest team of Becky Engle and Tommy Payne in second place. The regional competition was held on Feb. 25 and 26, 1982.

The Turner-Spivey team then went on to compete in the national finals in Houston, Texas, where they reached the quarter

finals on March 26th. They defeated teams from Willamette, Boston College and Notre Dame before meeting their match in another team from Willamette. The national championship was won by a team from Texas Tech University.

The format of the National Trial Competition consists of a full jury trial, omitting only jury selection. Each team makes opening statements and closing arguments and presents its case through direct examination of two witnesses and cross examination of their opponents' witnesses, with time limits imposed so that the entire trial is completed in half a day. Three lawyers judge each round. While one sits as presiding judge and the other two sit as "jurors," all three judge performance on the basis of demonstrated skills in trial advocacy. Coaches for the Wake Forest teams were Professors Rhoda Billings and Leon Corbett.

Rob Turner and Dave Spivey, winners of the regional competition traveled to Houston to compete in the national finals. Rob (right) and Dave (left) are shown here with Becky Engles who with Tommy Payne was runner up in the regionals.





# Law Fund Telethon

Thanks to the generosity of the Law School alumni and the determination of 72 law students the 1982 Law Fund Telethon was a tremendous success. Under the direction of Chairman Ty Morgan, these students made phone calls for four consecutive nights aiming for their goal of \$36,000 and 575 pledges. The actual amount secured has been tabulated by Julius H. Corpening and Sandra Conner of the Office of Development at \$33,471 and 508 pledges.

Special thanks is to be extended to Ty Morgan for his dedication and the following group of people for their personal contribution to the overall success of this event. In the third year class, Nancy Beasley, Kathy Feagins, Patria Fitzpatrick, Warren Kozak, Laurie Kroeschell, Christy Maytt and Penny Orr led this class to collect \$16,030. Warren Kozak's persuasive abilities are now legendary, earning him the Grand Prize for the most money collected and the highest number of pledges.

The second year class, spurred on by the outstanding efforts of Chip Burrus, Jana Joustra, Kim Ledford, Libby Leffler and John Madden, collected \$9,490. John

received the "Best Phone Manners Award" for his New Jersey technique.

The first year class was guided by Robin Brown, Nancy Connolly, Karen Gagliano, Wendy Hoge, Dave Leland and John Rusher collecting \$7,951. The extra effort demonstrated by the work-harried 1-L's was exemplified by Wendy Hoge, winner of the "True Grit and Purple Heart Award." Wendy did all her phoning with a cast on her broken "talking" arm.

In addition to the honorary awards, prizes have been awarded in three categories. Grand Prize was taken by Warren Kozak with a total of \$5,575 and the highest average pledge of \$101.36. Runner Up Prizes were received by Patria Fitzpatrick for the highest amount of money — \$1,950 — and Rudy Ogburn for securing the most pledges — 21. In the final category a prize was awarded to the individual with the most money and highest number of pledges for each night of the Telethon. Warren Kozak captured this prize for every night except Wednesday, when Julianna Rinehart collected \$676 and Scot Kirkpatrick obtained 13 pledges.

## Law School Intramural Sports by Christi Myatt

*Participation by the Wake Forest Law Students in WFU intramural sports illustrates the adage that a healthy body leads to a strong mind. These students know that one hour of concentrated study following a break produces more than two hours of hard study during a marathon study session. Instead of returning from a "pork-out" on greasy foods or one's mid-afternoon soap opera, students returning from the athletic field are mentally and physically refreshed.*

### Fall Sports

This fall teams were fielded in the areas of Carolina tag football, co-ed softball, tennis, handball, volleyball, soccer, and water-polo. In football, two 3-L law school teams reached the playoffs. Chuck Neeves' 'Old Timers' entered the playoffs with a 3-2 record, winning two rounds to reach the quarter-finals. The 'CJ's' coached by Poli Barefoot entered at 3-3 but lost in the first round to an eventual semi-finalist team. Showing that experience does pay off, these two teams were followed in the rankings by Mike Doran's 2-L team, 'Brief

Nudity' (2-3), and Jim Caine's 1-L 'Advocates' (0-3).

Two law school teams battled their way through the intramural double-elimination co-ed softball tournament. Bob Adams' 'Cardinals' valiantly fought two teams prior to suffering their second loss. Mike Doran's 'Capital Punishment' made it all the way to the semifinal round. 'Capital Punishment' easily circumvented the double handicapping rules requiring (1) 5 females and 5 males per team and (2) all males to bat on the opposite side from which they usually hit. According to Doran, the team fielded several "jockettes" such as Laurie Hutchins, Kim Going, Marcy High, Christy Myatt, Nancy Fountain, Pam Gerace and Michelle Bartoli and collegiate switch-hitters, Mark Cubberly and John Madden.

The intramural men's tennis singles tourney opened with 115 contestants of which three were law school hitters. Eric Davidson, 2-L, lot in the first round and 3-L Warren Kozak went out in the third. But the law school's lone danger in the form of Ty Morgan swung it out until the end before losing to the two-time intramural champ, Jim Cater (MBA-1), in the

championship 6-1, 6-2.

Congratulations go to the 1-L team of Walter Holton and John Belser whose serving and volleying defeated the nemesis of Jim Cater and his partner Scott Curry to win the campus doubles tennis championship 6-1, 1-6, 7-6 (10-8 tiebreaker). We hope these two will continue their reign as champions for two more years.

Not to be outdone, 2-L Jim Kuyk became the second law school champ this fall when he took honors in the intramural handball competition. Five competitors were "kuyked" by the unwielding hand of Jim as he advanced through the rounds. One was quarter-finalist Doug Corkhill (3-L).

Four law school teams set and spiked their way through volleyball season with one team advancing to the semifinals. 'Not Fragile' led the law school with a 7-1 overall record. 3-L team members Bob Adams, Poli Barefoot, Doug Martin, Bruce Maxa, Bill McRae, Ty Morgan and Bobby Outten overcame a considerable point deficiency before losing a 12-15 squeaker in the semifinal game (they were down 4-14 at one point). 'Long Arm of the Law' volleyed to a 3-2 record and 'NYBS' dove to the floor with a 1-5 season. Both are 1-L teams. The 'Women in Law' finished the season strongly with a 5-2 record before losing in the first round of the playoffs. Despite the loss of 3-L's Kathy Feagins and Christy Myatt, 'WIL' should continue to dominate their games with returning veterans Karen Trafford, Allison Brown, Michele Bartoli, Linda Applyby, Pam Gerace, Brenda Brewer and Cindy Sechler.

Unfortunately the law school teams did not fair as well on the soccer field. 'WIL' has yet to win a game after two seasons. As one person noted, "I just don't know what I am doing out there against those amazons." In the men's division, the luckless 'Padded Cells' similarly regarded their final record "useless dicta." At last count they had a 1-2 record. One reason for their record could be the fact that they were in the same division as Mike Doran's 'Leather Balls.' A combination of talent and finesse, this team kicked their way into the playoffs with a 5-0 record. However, the offensive talents of 3-L's Fred DeVore, Bob Ziegler, Larry Fine, 2-L's Ben Sutton, Brendon Konouch, and Mark Cubberly, and the defensive skills of 3-L Warren Kozak, 2-L's John Hanlon, Nelson Summerville, and John Madden could not prevent their defeat in the opening round of the playoffs to the eventual second-place team.

Meanwhile in the water . . . the law school naval force, the U.S.S. 'Sea Otters' under the command of Admiral Dolph Sumner, torpedoed their opponents with such scores as 11-0 and 5-1 to sail away

with a 4-1 record. One sports writer noted that the two top teams were composed of ex-swimmers and ex-water polo players (normally freshwater creatures), which is probably one of the reasons no playoff bid surfaced for the oceanic 'Sea Otters.'

## Spring Sports

When spring arrives in North Carolina a young man's fancy or young woman's turns to . . . what else, basketball. Sixteen men's and three women's teams represented the law school in intramural basketball this year. The Zandakans led by Kurt Clawson held the top position in the law school rankings with a 6-0 record. In second place, Actual Malice finished with a 5-1 record. Both the Zandakans and Actual Malice received playoff bids. However, neither team could keep enough players in town over spring break to play in the playoffs. (The undergrads purposely scheduled the tournament during the law school's spring break instead of their own.) Following in third was NYBS (4-2) whose high scoring center, Mike Maizes, should prove a threat next year. Short, But Slow, with not so short Professor Parker at center ended the season at 3-2 and fourth place. Rounding out the top five was Big Bud and the Taste Buds accompanied by their cute 'buddette' cheerleaders with a 6-0 record. The scoring talents of Pella Stokes, Keni "Silk" Burke and Alex Pearce, combined to give Balsa a 3-3 record and a sixth place finish. John Madden's Clams dropped to 2-4 for the year and seventh place. A slim young 1-L from Boonesville, Jim Phillips, captured the hearts of women and an eight place finish for his team Whatsamata U. (2-4). In ninth and tenth place were Not Fragile (2-3) and Prima Facie (2-3) respectively. Eleventh through

sixteenth place finished as follows: Simo's Regulars (5-1), TBA (2-3), BSA (5-1) Whitelighting (2-3), Tools (1-5) and last but not least, Backdoor Men (1-5).

Due to scheduling problems, (theirs that is) Minimum Contacts could not play Dean Smith's team in the regular season. But now that the Tarheel Blue have won the Big One in the sky, an invitation will be presented to Coach Smith. After all, the girls only want to play the bet so why settle for Georgetown. This year, Minimum Contacts led by 3-L's Liz Neisler, Christy Myatt, Kathy Feagins, Mary Ferebee, Susan Deathridge, Nancy Beasley, 2-L Evelyn Ernest, and returning veteran Ginny Espenshade, defeated 2-L Diminished Capacity and 1-L Cupable Action. Their shooting and defensive rebounding keyed most of their wins. (One med school team lost to this "Sampsonite" team 33-3).

Meanwhile in another part of the gym, Steve Garfinkel casually won the 167 pound weight class in intramural wrestling. Garfinkel decisioned his opponent in both the finals and semi-finals. Brian Gallagher was less successful. He lost 5-3 in the semi-finals of the 135 pound weight class.

In lighter action, John Schaeffer (1-L) nipped Ken Bell (2-L) in the semi-finals of the racquet ball tournament to advance to the finals. Runner Jack Connor, who has never been seen to walk, kicked to a 17th place finish in a recent locally held half-marathon event.

This year's softball season opened ironically; it occurred over the law school's spring break. Attempting to make up for lost time will be the Cardinals (whose age may prove a handicap), Capital Punishment (who took it on the nose last fall from the Cardinals but whose hitting could be the key), and NYBS's Sultans of Swing (who are simply out "to avenge the Yank's World Series loss).

In similar action in the women's division is WIL who is returning with a strong hitting and pitching attack. Both the men's and woman's teams appear to be top contenders for the campus championship.

## Supreme Court Trip

For the third time a contingent of students from Wake Forest Law School made a successful sortie upon the United States Supreme Court. This year's event was held on January 20, 1982, and consisted of eighteen students and their intrepid leader, Professor Charles P. Rose.

The agenda for the excursion followed that of previous years — catching an early morning flight from Winston-Salem to Washington and arriving at the Supreme Court in time to be seated (reserved seats) for the morning session beginning at ten o'clock. The session adjourned promptly at noon so the travelers were free to pursue their own interests in the afternoon, returning to Winston-Salem on a late afternoon flight.

This year the students heard two cases argued, each lasting one hour. The first case was *Brown v. Hartlage* (an unreported Kentucky opinion) which involved the issue of whether a state statute violated the guarantee of encumbered political speech accorded by the First and Fourteenth Amendments. The candidate during a campaign for a local office promised that if elected he would serve for three thousand dollars less than the designated salary for the position. He retracted this statement four days later and was subsequently elected to office. According to the statute this was an unlawful election promise in that it was not capable of legal accomplishment and the Kentucky courts voided petitioner's election.

The second case was *In re State of Florida, Department of State v. Treasure Salvors, Inc.*, 621 F.2d 1340 (1980), which involved a salvage company's attempt to have returned to them from the state of Florida twenty-five percent of the treasure which they had recovered from a Spanish ship that was sunk in the Florida Straits in the 1600's during a hurricane. The salvage company had contracted with the state of Florida to give the state twenty-five percent of any treasure recovered. In the interim, the United States government in an



independent action brought suit against the state of Florida asserting ownership of the submerged land. The Supreme Court held for the United States government. The salvage company then filed an action asserting title to the ship and the United States intervened and asserted title to the vessel. This action was decided in favor of the salvage company. The salvage company then asserted its claim for the return of the twenty-five percent of the treasure that it had already turned over to the state of Florida. As its defense against the salvage company the state of Florida raised the Eleventh Amendment in that it asserts ownership of the artifacts in dispute and thus the District Court's attempt to adjudicate ownership is, in essence, a suit against the state. Florida argues that since it has not waived its Eleventh Amendment protection by voluntary assertion of a claim or defense, the District Court lacked jurisdiction.

Professor Rose stated the arguments in both cases were the best that have been heard in the three years students from Wake Forest have been to the Supreme Court.

Typical of the student reaction to the trip are the enthusiastic comments of second year students Mark Cubberley and Rick Hammett. Mark felt it was a great experience and very impressive. He remarked on the various presentations of the attorneys and on the style and methods of questioning of the various justices as well as the presence each justice exuded from the bench. Rick, a two year veteran of the Supreme Court trips, agreed that the presentation of counsel was better than the year before and believed that by seeing these arguments it gives the students increased confidence in their own abilities and a greater appreciation of the quality of preparation being received at Wake Forest. He feels it is not only a good break from studies but is an inspirational break as well. Rick and Mark were favorably impressed with the performance of Justice O'Connor and her demeanor on the bench. Both students thoroughly enjoyed the trip and plan on returning next year.

With the afternoon free the students enjoyed visiting various sites including the White House, Blair House, Washington Monument, and National Gallery, as well as savoring some of Washington's finest cuisine.

## Faculty News

*In the fall issue, the Jurist provided a profile of Law School administrators and faculty. The following is an update on faculty members joining the Law School in January 1982 and those who will begin next fall.*

### **Janice Jones** *Lecturer in Law*

Janice Jones joined the law school faculty in January, 1982. She is teaching E.R.I.S.A. (Employee Retirement Income Security Act), a course the law school had not been able to offer for several years. A native Californian, Ms. Jones adds a wealth of experience and expertise to the law school curriculum. She received a B.S. and M.A. in psychology from the University of California at Berkeley in 1969 and 1970, respectively. Beginning a long trek which eventually brought her to North Carolina, she attended Law School at the University of Michigan in Ann Arbor, receiving her J.D. in 1973.

Following graduation, Ms. Jones worked for Ford Motor Company in Dearborn, Michigan as Assistant Regional Attorney (Tax & Finance) for two years and then moved to Chicago and a position with Montgomery Ward, working her way from Employee Benefits Attorney to Senior Attorney. Since 1978, she has been with Booke & Co., a Winston-Salem actuarial firm, and is now Vice-President and General Counsel of the company and Manager of its Technical Support Division. Her teaching career began at the University of Virginia Law School during the 1980-81 school year where she also taught E.R.I.S.A.

Ms. Jones has traveled extensively, conducting seminars and presenting speeches on Employee Benefits throughout the country. She is actively involved in professional organizations as a member of the A.B.A. Tax Committee, the E.R.I.S.A. Legislative Council and State Chairperson of the Association of Private Pension and Welfare Plans. Despite the challenge of her busy career and traveling schedule, Ms. Jones enjoys teaching and plans to continue as a lecturer in law.



**Ms. Janice Jones**, lecturer in law, joined the faculty this spring.

## Calvin W. Sharpe *Visiting Professor of Law*

Mr. Sharpe is an Assistant Professor of Law at the University of Virginia where he is currently teaching Labor Law, Collective Bargaining in the Public Sector, Evidence and Trial Advocacy. Since he is from Hickory, North Carolina originally, his stay at Wake Forest will not be an entirely unfamiliar one. Professor Sharpe will continue to teach in his areas of interest while visiting Wake Forest.

Professor Sharpe received his B.A. *cum laude* in Philosophy and Religion (along with a minor in Psychology) from Clark College, Atlanta, Georgia in 1967. From 1967-68 he was a Post-Baccularate Fellow in Psychology at Oberlin College, moving from there to Chicago Theological Seminary where he was involved in the Master of Arts and Religion Program until 1971.

He then attended Northwestern University School of Law where he was on the

Law Review, receiving his J.D. in 1974. A clerkship in the United States District Court, Northern District of Illinois for Judge Hubert L. Will filled the first two years of his legal career. In 1976, he became an Associate in the Chicago firm of Cotton, Watt, Jones, King and Bowls until 1977 when he joined the National Labor Relations Board as Trial attorney for Region II here in Winston-Salem. In 1980, he accepted his current position with the University of Virginia. Mr. Sharpe is a member of the Illinois Bar Association and the Virginia Trial Lawyers Association.

Professor Sharpe is currently working on an article to be published in the fall of 1982 on the admissibility of other crimes into evidence. His article entitled *Comment: A Reappraisal of the Bargaining Order: Toward a Consistent Application of NLRB v. Gissel Packing Co.* was published in 69 Northwestern L. Rev. 556 (Sept.-Oct. 1974). His other activities have included teaching in the University of Virginia Institute for Trial Advocacy (Janu-

ary 1982), a nine day intensive trial institute for practicing attorneys and participation in the National Section of the National Institute for Trial Advocacy (N.I.T.A.) in Boulder, Colorado (summer of 1971) and the N.I.T.A. Advocacy Training Institute at Harvard University (April 1982).

Mr. Sharpe developed an appreciation for the educational process during his participation in the Ocean-Hill Brownsville Experiment in Decentralization of Public Schools as a history teacher for grades 4-8 in New York City. This experience (1968-1969) preceded law school and sparked an interest in legal education that has persisted since his clerkship under Judge Will. At that time, he decided that a broad range of practice was an invaluable prerequisite before entering the law school classroom as a professor. "Hindsight has affirmed the wisdom of this approach to legal education", Professor Sharpe says. He is looking forward to continuing this voyage during his stay at Wake Forest.

## Dr. Hugh Divine *Professor of Law*

Dr. Hugh Divine, who retired from his faculty position in the spring of 1979, will return to teach again at the Wake Forest University School of Law in the fall of 1982. Dr. Divine left the university to share his vast store of legal experience and knowledge with students at Campbell University School of Law.

A native of Albany, Georgia, Dr. Divine attended Georgia State College for men, graduating with the class of 1933. "The War" intervened and demanded the college grad's talents as a navigator in the Naval Air service. Dr. Divine later returned to his native Georgia, and in 1951 finished his legal education at Emory University School of Law.

He arrived in Winston-Salem, North Carolina with his wife Marion and their two daughters in 1954. Dr. Divine began his respected and impressive teaching career that fall. He continued to teach at Wake Forest and to make this city his home for the next thirty years.

In the fall of 1979, Dr. Divine sojourned to Campbell University School of Law. He confided that he was a "little surprised" upon his arrival at Campbell to discover that the "university had a very good library." He observed that a new law school's first biggest problem is creating an

adequate library. Another challenge to due beginnings of his educational institution is attracting a distinguished faculty. Dr. Divine was also "amazed at the good and interesting faculty" that the young law school had already acquired.

Although Dr. Divine has enjoyed his teaching experience at Campbell, he eagerly anticipates returning to Winston-Salem and the Wake Forest law school: "I think of it [Winston-Salem] as home. After thirty years, it's hard to leave." The only difference the professor has observed in his teaching approach is "having to work up new courses; I forgot how hard that was." One thing hasn't changed, however, in his long and illustrious career of dedication and devotion to teaching students the law. Dr. Divine gruffly observed: "I never enjoyed faculty meetings, but I always have to go to them."

The professor, on his return to the law school, will teach only first-year students. He will be involved primarily in Legal Bibliography and Contracts. When asked if the latter was his favorite course, Dr. Divine responded that "Conflict of Laws" was his favorite, but that "Contracts is a close second." He feels that Contracts is usually low in a first year students' estimation, but that "Contracts is always ahead of Civil Procedure."



## An Analysis of the Diminished Capacity Theory as An Alternative Policy Option for North Carolina

*The Jurist endeavors to provide its readers with critical commentary on issues of interest to the N.C. Bar. The North Carolina Criminal Code Commission is currently in the process of formulating a bifurcated trial proposal in criminal cases concerning reduced mental capacity. Such a proposal would allow evidence of impaired volitional control during the secondary (penalty) phase of the trial. The following is a short analysis of the diminished capacity theory as an alternative policy option.*

Bob Ehrlich is a third year law student from Baltimore, Maryland attending Wake Forest on a Carswell Scholarship grant. He received a B.A. from Princeton University (1979) with a concentration in political science and economics. This article is excerpted from an independent research note concerning the adoption of the diminished capacity defense in North Carolina.

### INTRODUCTION

One of the most perplexing issues confronting the American criminal justice system is the proper disposition of those criminal offenders who show evidence of mental impairment but are not insane. This problem is exacerbated in jurisdictions like North Carolina which still follow the rigid *M'Naughten* test of criminal responsibility.<sup>1</sup> Since *M'Naughten* remains the majority rule in over half of the American jurisdictions, the continued validity of the test

remains an important issue.

This article will summarize one supplement to *M'Naughten* — the theory of diminished capacity,<sup>2</sup> as well as the proper scope of disposition procedures to be implemented where a partial insanity type of defense like diminished capacity is adopted.

### THE M'NAUGHTEN RULE

The theory of diminished capacity is best understood in light of the elements not included therein. In the majority of American jurisdictions, the "*McNaughten* Rule" has long meant that the defendant is insane only where he "has suffered a defect of reason, from a disease of the mind, so that at the time of the criminal act he did not know the nature and quality of the act or that the act was wrong."<sup>3</sup> In North Carolina, the standard definition has been altered to read: "That the test of insanity as a defense to a criminal charge is the capacity to distinguish between

right and wrong at the time of and respect to the matter under investigation."<sup>4</sup>

Two recent North Carolina cases illustrate the limiting nature of the *M'Naughten* Rule. In *State v. Johnson*<sup>5</sup> and *State v. Willard*,<sup>6</sup> the Supreme Court of North Carolina affirmed the *M'Naughten* doctrine as the sole test of criminal responsibility in North Carolina. In each case, an accused had introduced substantial expert testimony on the issue of impaired volitional capacity. In affirming the continued adherence to *M'Naughten*, the Court cited the irrelevance of volitional impairment once the threshold question of the right/wrong test was met.<sup>7</sup> Once this threshold determination is made, an accused in a *M'Naughten* jurisdiction is left with little but mitigation.<sup>8</sup> This type of analysis is extremely helpful to the state, since the issue of culpability may be summarily proven in cases where the expert testimony is conflicting on the issue of volition — but in accord on the issue of cognition. The cognitive inquiry is the sole relevant issue under the *M'Naughten* Test.

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1. Clark & Fin 200, 8 Eng. Ref. 718(H.2 1843). As developed in this note, North Carolina has steadfastly refused to abandon the *M'Naughten* formula in favor of more "progressive" tests for criminal responsibility. See *State v. Humphrey*, 283 N.C.570, 196 S.E. 2d 516(1973); *State v. Benton*, 276 N.C.641, 174 S.E. 2d. 793(1970).

2. Although the theoretical foundation of diminished capacity has been around the criminal law for centuries, the initial jurisdiction to adopt the modern formu-

lation of the defense was the Supreme Court of California in *People v. Wells*, 33 Cal. 2d. 330, 202 P. 2d 53(1948) cert. den. 338 U.S. 836(1949). In *Wells*, the defendant's evidence of diminished mental capacity was deemed admissible to prove lack of the requisite mental state essential to the offense.

3. These are the standard hornbook elements of the *M'Naughten* Test for criminal responsibility.

4. See *State v. Cooper*, 286 N.C.549,569,213 S.E. 2d 305(1975); *State v. Benton*, 276 N.C.641(1970); *State v.*

*Swink*, 229 N.C.123(1948).

5. 298 N.C.47,257 S.E.2d. 597(1979).

6. 292 N.C.567,234 S.E.2d. 587(1977).

7. *State v. Johnson*, 298 N.C.47,68(1979); *State v. Willard*, 292 N.C.567,579,234 S.E. 2d. 587(1977).

8. Failure to give proper mitigation instruction was held reversible error in *Johnson*. The Court pointed out that mitigation was the only issue entitled to review once the *M'Naughten* formula had been applied and established below.

## PARTIAL RESPONSIBILITY

The defense of partial responsibility is an alternative partial insanity defense similar to diminished capacity. Under this theory, a prima facie case of mental impairment will result in a conviction of a lower grade offense.<sup>9</sup> The rationale for the imposition of the lesser offense is that the defendant is not guilty of a higher grade offense because evidence of impaired mental capacity negates one or more of the specific intent elements of the crime.<sup>10</sup>

Partial responsibility is applied only to specific intent offenses since evidence of mental impairment is limited to the specific elements of mens rea constituting the complete defense.<sup>11</sup> Where a jury believes an accused charged with first degree murder lacks the mental capacity to premeditate and deliberate, there is no possibility of a conviction under the charged offense. The element of causation is especially relevant to partial responsibility; the causative aspect of the doctrine separates it from the ameliorative nature of a similar partial defense—diminished responsibility. At this point it is appropriate to synthesize the dual concepts of partial responsibility and diminished capacity in order to differentiate the relative scope of the respective doctrines.

## DIMINISHED CAPACITY AND PARTIAL RESPONSIBILITY

Diminished capacity theory parallels partial responsibility in virtually every important respect, and many commentators fail to distinguish the actual and (more importantly) the perspective differences between the two concepts. The Model Penal Code states the doctrine

of diminished capacity as follows: "Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense."<sup>12</sup>

From a theoretical standpoint, both theories approve the admissibility of evidence tending to show that the defendant was suffering from impaired psychological processes at the time of the alleged offense. When such evidence raises a reasonable doubt about whether the defendant had the requisite specific intent, a defendant may only be guilty of a lesser included offense.<sup>13</sup> Since the implementation of either doctrine would negate the existence of a state of mind required for the offense, the issues raised under partial responsibility analysis regarding the negation of malice aforethought (under homicide statutes) apply equally to diminished capacity.<sup>14</sup> One problem of admitting testimony relevant to impaired mental capacity is incorporating this evidence into the existing statutory state of mind requirements of most jurisdictions.

The increased significance of expert testimony presents a major distinction between partial responsibility and diminished capacity because it raises the issue of whether expert testimony should be limited to only those offenses requiring a specific intent. Some proponents of diminished capacity favor expanding the theory beyond the specific intent limitations imposed by those jurisdictions which have adopted it. One advantage of this change would render the debate surrounding the element of malice as a specific intent element pointless, since adoption of diminished capacity as a complete substitute for the insanity defense would subject general intent crimes to the type of diminished capacity

analysis presently limited to specific intent offenses.

A complete diminished capacity defense would be differentiated from *M'Naughten* by an acceptance of both cognitive and volitional evidence relevant to the issue of impaired mental processes. The implementation of diminished capacity as a complete defense would require the adoption of partial responsibility as a partial defense in order to satisfy the equitable policy considerations behind each theory. The presence of partial responsibility would ensure consideration of the ameliorative aspects of the defendant's evidence in capital cases.

The adoption of diminished capacity as either a partial or complete defense would reduce the burden on the jury who (in *M'Naughten* jurisdictions) must determine the existence and quality of a mental disease or defect. Codification of diminished capacity would necessitate new commitment procedures concomitant with the degree of impairment suffered by the particular defendant. Although legislative enactment of disposition procedures must set out general guidelines for length and scope of treatment, the unique nature of an individual's mental illness would require a measure of discretion to be invested in the trial judge. There would seem to be no constitutional problems with the imposition of diminished capacity evidentiary and commitment procedures (and the elimination of the traditional insanity defense) given Mr. Justice Marshall's majority opinion in *Powell v. Texas*.<sup>15</sup> *The major problem is establishing a forum for the adjudication of diminished capacity in the state courts given their historical reluctance to litigate the issue of partial insanity defenses where M'Naughten has been the traditional rule.*

9. Levin, "Psychiatric Evidence in Criminal Cases For Purposes Other Than The Defense of Insanity," 26 Syracuse L. Rev. 1051, 1055 (1975).

10. Id. at 1060. See also Weihofen, "Partial Insanity and Criminal Intent," 24 Ill. L. Rev. 505, 514 (1930).

11. See W. LaFare & A. Scott *Handbook on Criminal Law*, at 335-342 (1972).

12. Model Penal Code, § 4.02(1) (1962) proposed official draft).

13. For a practical application of diminished capacity

theory in a previous "traditional" jurisdiction, see *Hughes v. Mathews*, 440 F. Supp. 1272, 1275 (E.D. Wis. 1977). In that case the court held the exclusion of evidence bearing on the defendant's mental abnormalities relieved the state of its duty to prove each and every element of a specific intent offense. The defendant was thus deprived of his Fourteenth Amendment right to due process of law.

14. For a persuasive discussion about the availability of diminished capacity to general intent offenses, see *Bethea v. United States*, 365 A. 2d 64 (D.C. Cir. 1976), where the court concluded: "We are not satisfied that

the rule (diminished capacity) could be confined (to the trial of offenses involving specific intent). Assuming the competency of experts to testify as to an accused's capacity for specific intent, we see no logical bar to their observations as to the possible existence of lack of malice or general intent. Id. at 90. The Court made these comments while rejecting the diminished capacity defense in the District of Columbia, Id. at 86.

15. Staff of Senate Committee on the Judiciary 93 Congress Second Session Report on Criminal Justice Codification, Revision, and Reform Act of 1974, 552, 1974, p. 6371.



## DISPOSITION PROCEDURES UNDER DIMINISHED CAPACITY

The disposition of those defendants who successfully utilize a diminished capacity defense represents an important issue for those jurisdictions adopting the defense. Most states follow a less rigorous standard in civil commitment procedure as compared to criminal defendants acquitted by reason of insanity.<sup>16</sup> The author views the issue of disposition procedures as particularly relevant if jurisdictions desire to modernize their criminal statutory law. The purpose of the criminal law is to punish criminal offenders with a term of confinement concomitant with a societal judgment as to their moral turpitude. A diminished capacity jurisdiction must meet the burden of adopting appropriate sentencing procedures that reflect this interest. Professor Bernard Diamond has stated that adoption of a partial insanity type defense like partial responsibility will prompt the courts to send a greater percentage of mentally ill offenders to mental institutions.<sup>17</sup> He argues that the strictness of some insanity laws (exemplified by the *M'Naughten* Rule) has resulted in the confinement of a large number of the mentally ill in state correctional institutions with inadequate treatment facilities.<sup>18</sup> Since *M'Naughten* jurisdictions exclude virtually all expert testimony outside the narrow scope of the wrong/right determination, Professor Diamond's observation has a great deal of validity. The state legislatures must effectuate changes in statutory commitment procedures with a view toward the policy objectives to be achieved by diminished capacity.<sup>19</sup> Two realistic alternatives cited by many commentaries are the utilization of the special verdict and independent sentencing panels comprised of experts in the field of abnormal psychology.

The implementation of specialized sentencing panels and the adoption of special verdicts would help confine the imposition of criminal sanctions to those defendants who are properly subjected to criminal sanctions. The legitimate

societal interest in retribution is not achieved where mentally ill defendants are confined within the general population of a correctional facility, but this is the reality faced by prison administrators in every jurisdiction.<sup>20</sup> Where a criminal defendant successfully asserts a defense of diminished capacity, the jury may take cognizance of this fact through adoption of a special verdict. For example, if a defendant charged with first degree murder is ultimately convicted of second degree murder, the jury could cite evidence of diminished capacity as the reason behind imposition of the lower grade offense. The special verdict may include a determination regarding the proper degree of punishment in view of the weight of evidence supporting the presence of impaired mental processes.<sup>21</sup> This would not constitute a compromise verdict since the jury would be instructed on the proper application of diminished capacity with emphasis upon the element of causation. The judge would then take this finding into consideration as a mitigating factor relevant to a possible civil commitment in lieu of criminal sanctions. Although this type of sentencing procedure meets the policy goal of minimizing penal sanctions for those defendants who require psychological treatment, it may not be a realistic alternative given the present financial and administrative problems of correctional institutions. Few states have statutory procedures whereby the psychiatric evidence proffered at trial may be transferred to the proper officials at the correctional authority.<sup>22</sup>

The concept of an independent panel of experts acting as a sentencing authority in insanity cases was cited by the D.C. Court of Appeals in *Bethea v. United States*.<sup>23</sup> This alternative presents a number of interesting possibilities. First, it would negate the possibility of jury prej-

udice during the sentencing phase of trial. This consideration is especially relevant where an accused stands indicted for a particularly brutish homicide. Secondly, an expert panel may be more qualified to find the correct length and method of therapeutic confinement to run concurrent or consecutive with the criminal sentence. There are a number of statutory schemes a jurisdiction may utilize in codifying criminal commitment procedures under diminished capacity doctrine. In the District of Columbia a convicted defendant must establish his abnormality by a preponderance of the evidence and can regain his freedom through either an unopposed certificate by the appropriate medical authorities or at an administrative hearing where the individual bears the burden of proving his sanity by a preponderance standard.<sup>24</sup> This type of procedure may be utilized in a diminished capacity jurisdiction although the incomplete nature of the defense would seem to require imposition of a minimum term of incarceration.

The length of criminal confinement poses an interesting problem for the sentencing panel. Adoption of predetermined or statutory gradations in sentencing would defeat the purpose of a case by case analysis. Since the majority of their caseload would consist of homicides, there would be pressure to impose at least a minimum term of criminal confinement even in the most convincing cases of diminished capacity. Imposition of criminal sanctions would be justified given the present limitation to specific intent offenses. Even in view of the public interest of retribution, the panel must not lose sight of the treatment aspects of the defense. The panel's existence is predicated upon societal interest in the proper disposition of psychologically impaired criminal defendants.

16 Comment, "Commitment Following An Insanity Acquittal," 94 Har. L. Rev. 605, 605, n.3(1980).

17 Diamond, "Criminal Responsibility of The Mentally Ill," 44 Stanford L. Rev. 59,85(1961/62).

18 Id. at 84.

19 This was the view adopted by the D.C. Court of Appeals in *Bethea v. United States*, 365 A. 2d. 64, 91(D.C. Cir. 1976).

20 Professor Diamond writes that..."due to the strictness of our law defining legal insanity, the courts have always committed large numbers of the mentally

ill to prison. But there has never been any official acknowledgement of the existence of (their) mental illness. Diamond, note 17 supra, at 84.

21 Werhoben and Overholsen, "Mental Disorders Affecting The Degree Of A Crime," 56 Yale Law Journal 959,980 (1977).

22 Levin, note 9 supra, at 1055 n 21. Professor Levin cites 18 U.S.C. 4208 (b)(1970) as a statutory device

whereby a judge may order a psychiatric evaluation completed before sentencing.

23 365 A. 2d. 64(D.C. Cir.1976).

24 D.C. Code Ann. 1973, S 24-301 (d), (e)(j).

# LAW DAY 1982

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*Law Day 1982 was celebrated by Wake Forest University School of Law on Saturday, April third at Ramada Inn West in Clemmons. The festivities were stretched into a four day affair by S.B.A. Chairpersons Eloise McCain (Law Day), Victor Morgan (Talent Show), and Mike Sabiston (Spring Fling). Activities got off to a wonderful start on Thursday with the second Annual Talent Show at the National Guard Armory. Spring Fling followed on Friday with students relaxing playing golf, croquet, volleyball, ... at Frisbee Golf Course.*



Clockwise from top right: **Professor Isacc Boyd Covington** accepts his second Excellence in Teaching Award.

**Professor James Sizemore** visits with alumni **Mr. Leon Rice** (left) of Winston-Salem and **Mr. Horace Kornegay** (right) of Washington, D.C. **Mr. Edward Knox** of Charlotte accepts the SBA-Jurist Ourstanding Alumni Award.

**Beverly T. Beale** and wife **Judy** of Lenoir, North Carolina, joined the third year students at the party in their honor at Bermuda Run.

**Professor James Bond** was one of many faculty members enjoying the evening at the Ramada Inn.

**Mr. Horace Kornegay** and **Dave Crescenza** (right) ('81) share a few moments at the party in honor of the third year class members.







## Excellence in Teaching Award

This year's graduating class selected Isaac Boyd Covington II as the recipient of the Jurist Excellence in Teaching Award. Professor Covington is now a two-time winner of this honor, having been chosen as the first honoree in 1979.

The nominees for the award are all professors who have taught the graduating class. This list includes regular staff, as well as visiting and adjunct professors. Each member of the class may cast one vote in the balloting. The Jurist staff tabulates the votes cast and the editor announces the winner at the Law Day banquet.

The purpose of the award is to honor a professor who exemplifies excellence in the teaching of law and who the third-year students feel has had a significant effect on their legal education.

In accepting the award, Professor Covington attributed his successes at the law school to the fine quality and the support of his colleagues on the staff.

Professor Covington has been teaching at Wake Forest School of Law since 1977. Before coming to Winston-Salem, Professor Covington was on the faculty of the University of Puget Sound. A native of Wadesboro, North Carolina, Professor Covington received his B.A. from Davidson College and his J.D. from the Univer-

sity of North Carolina at Chapel Hill.

Noted for his command of the U.C.C., Professor Covington continues to impress his students with perfect recall down to the least subdivision of the Code. And if there is any doubt as to student comprehension of the statute being considered, his inevitable query issues, "Does everybody see that?"

The enthusiastic response to the announcement of his selection as the recipient for this award left no doubt that the third-year students had made a popular choice.

## Jurist Outstanding Alumnus

The 1982 Student Bar Association—Jurist Outstanding Alumnus award was presented to Charlotte Mayor H. Edward Knox on April 3 at the Law Day Banquet. A 1963 graduate of the Wake Forest School of Law, Knox has become known as one of North Carolina's most distinguished public servants.

Besides Knox's numerous civic and political accomplishments, he has also provided notable service to the School of Law. In 1978, he served as chairman of the fund raising committee for the school, during which time contributions rose by 40 percent. Knox is also a past president of the alumni association of Wake Forest School of Law.

Knox, however, is perhaps best known for his contribution to city and state politics. After graduating from Wake Forest, where he was a Babcock Scholar and president of the Student Bar Association, he was appointed by then Governor Dan K. Moore to the North Carolina Alcohol Beverage Control Board. Knox was a member of the North Carolina State Senate from 1971 until 1974 and served as chairman of the Mecklenburg Legislative Delegation.

While in the legislature, he actively supported such new programs as public kindergartens, programs for exceptional children, community-based alternatives for undisciplined children, and mandatory state study of mass transit and rapid transit alternatives. Knox also helped create the North Carolina Energy Crisis Study Commission and championed the rights of the mentally ill by personally leading the effort creating the Mental Patients' Bill of Rights. He led

the reform on the workmen's compensation laws of North Carolina, introduced the first local option liquor-by-the-drink legislation, and sponsored the North Carolina constitutional amendment authorizing environmental protection. During his legislative tenure, Knox also served on the North Carolina Courts Commission and was chairman of the four-year North Carolina Commission of Correctional Programs, otherwise known as the "Knox commission," which made broad reforms in North Carolina prisons. Knox was also a sponsor of the Presumptive Sentencing Act.

Always working for the betterment of his hometown of Charlotte, Knox has been responsible for the promotion of the Arts and Sciences in that city. He obtained funding for Charlotte's Discovery Place and initiated state funding for the Charlotte Symphony, Charlotte Ballet, and the Charlotte Opera. Knox is also a former chairman of the Board of the Charlotte Children's Theater.

In addition to the Children's Theatre, his other efforts on behalf of youth and education include serving on the Board of Directors of the University Research Park, the Board of Directors of Boys Town, and the Board of Visitors of Johnson C. Smith University. Knox has also found the time to coach little league baseball in Charlotte for some 18 years.

A partner in the Charlotte law firm of Wardlow, Knox, Knox, Robinson and Freeman, Knox is known as an outstanding trial lawyer. He is married to the former Frances Steagall and has four children.

In being honored as the recipient of the Outstanding Alumnus Award, Knox joins a truly distinguished list of alumni of the Wake Forest School of Law, including the following:

Basil M. Watkins  
Judge J.J. Hayes  
J.F. Hoge  
James W. Mason  
Dr. Norman A. Wiggins  
Justice Joseph Branch  
Senator Robert B. Morgan  
Judge Woodrow Jones  
Judge Hamilton Hobgood  
R.P. Burns  
G.C. Carswell  
Judge Edwin M. Stanley  
Judge John D. Larkins  
Judge Walter J. Bone  
Dean Carroll W. Weathers  
Justice David Britt  
Ralph James Scott  
Judge Hirman H. Ward  
Associate Dean Leon H. Corbett, Jr.



# Alumni News and Features



Second and third generation Demon Deacons pictured include Everett Murphrey, Bill Hough, Louis Meyer, Poli Barefoot, Gerald Roach, and Laurie Hutchins. (Not pictured: John Burns and John Gardner)

## “Like Father Like Son... or Daughter”

*The current law school student body includes eight second-generation and two third-generation families.*

by Drew Williamson

“A chip off the ol’ block.”

“Like father, like son.”

It is certainly not unusual for one to choose the same career as that selected by his or her parent, particularly where the legal profession is concerned, but at the Wake Forest University School of Law these two old adages seem particularly appropriate this year. At last count there are at least nine students who have not only decided to follow the footsteps of their

fathers into the legal world, but who have in fact gone a step further by choosing Wake Forest—as had their fathers many years earlier—as the source of their legal education. Included in this group are three third generation students.

Louis Meyer, a 1980 graduate of Wake Forest University, and a second-year student is one example. Louis' father, Justice Louis B. Meyer, Jr., who last year was appointed to the North Carolina Supreme Court, graduated from the School of Law in 1960, while his grandfather, the late

Louis B. Meyer was also a Wake Forest graduate. In this case, both father and son agree that the younger Meyer needed little help when it came time to choose between law schools.

“It was the only place I applied to,” Louis says. “If I hadn’t gotten in here I would’ve thought about something besides law school.” Louis, who describes himself as a “die-hard Deacon,” cites his familiarity with the surroundings from his undergraduate days as being an important factor in his decision, but admits to feeling at least

# Alumni News and Features

some family influence. "Dad always said it was a good law school," he says, "so I guess I did kind of feel the tug of family tradition."

The elder Meyer agrees that Wake had a head start when it came time for Louis to make his choice of schools. "We have an 11-year-old son who won't wear anything but Wake Forest colors," he says. "It's all he talks about. Louis was the same way. So it really wasn't much of a decision."

Besides the obvious achievements compiled by Justice Meyer since entering the legal profession, he owns a further distinction in being one of the few students to have attended the Wake Forest School of Law at both the "old campus" in Wake County and at the current Winston-Salem site. After completing his first year in 1955, Justice Meyer served in the military before returning to law school—and a brand new campus—in 1958. In comparing the two schools, he remembers the Wake County campus as being "very small, with only about 1400 students. Everyone called each other by name. When I went back," he says, "it was much larger and, of course, everything was new."

Another third generation product is Laurie Hutchins, a 1978 graduate of the University of North Carolina. Both Laurie's father, Winston-Salem attorney Fred S. Hutchins, Jr. and grandfather, the late Fred S. Hutchins graduated from law school at Wake Forest. Also a second-year student, Laurie first considered attending law school as a college senior, but delayed making a decision until after working for two years with a New York bank.

"When I told my father (about her interest in law school) I think it really surprised him," she says. "My bank encouraged me to apply at NYU, but I guess I'd always heard my father talk about Wake Forest."

A partner in the firm of Hutchins, Tyn-dall, Doughton and Moore, the elder Hutchins graduated from the School of Law in 1959 and admits to trying to aid Laurie in her decision-making process. "I encouraged her to apply to Wake and Campbell," he says, "but she's got a head of her own. She was dead set on Wake Forest and didn't even apply to Campbell."

First-year student John Burns is another whose father and grandfather both attended law school at Wake Forest before practicing in Whiteville. In fact, not only did John's father, John K. Burns—a 1936 graduate who is currently retired and living at Holden Beach—and grandfather, the late Robert Henry Burns, attend Wake Forest, but his uncle, Robert Henry Burns,

Jr. attended as well. A 1969 graduate of the University of North Carolina, John worked for several newspapers before coming back to school, the last being *The Jacksonville (N.C.) Daily News* where he was editor.

"I resisted law school after graduation," John says in explaining his decision to give up a journalism career for a legal career. "Everyone expected me to be a lawyer, because of my family. But 10 years of journalism convinced me that I needed to be a lawyer to accomplish the things I wanted to do. After spending years covering trials and just covering news you watch lawyers with this enormous status ascribed to them because of their education. So I guess there were also some ego reasons involved."

Besides the three third generation students, there are five more in the current student body who have followed their fathers to the Wake Forest School of Law. Interestingly enough, all five also attended Wake Forest as undergraduates.

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*"He could go any place in the world," he says, "but I'd pay his way at Wake Forest!"*

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Poli Barefoot, a third-year student who graduated from Wake in 1978, readily admits to having sought out the advice of his father, Superior Court Judge Napoleon B. Barefoot of Wilmington, when choosing between law schools. And, according to Poli, Wake seemed to be the best choice.

"He felt Wake Forest was the foremost school when it came to North Carolina law," Poli says "even though Professors Lee and Devine has left. If I were to practice in North Carolina, he felt Wake was the school to attend."

Judge Barefoot, who graduated from the School of Law in 1958 after having served as president of the student bar, agrees with his son's account of their conversations, but points out another factor which might have been involved. "All his relatives went to Wake Forest," he says. "His grandfather went to Wake and then on to medical school."

Another of the few to have attended law school at both campuses, Judge Barefoot hints at still another possible reason for his son's inclination towards Wake Forest. "Poli was born during my first year of law school," he says. "We took him to Winston-Salem with us when he was just a toddler."

For third-year student Gerald Roach the choice to attend law school at Wake Forest was made after his sophomore year. Like

his father, Greensboro attorney W. Linville Roach, Gerald a 1980 graduate, attended Wake under what is commonly referred to as the "three-three" program. Through the program Gerald was able to enter law school after only three years of undergraduate schooling. Although his father had also entered law school after only three years, Gerald says his decision wasn't necessarily the result of paternal influence.

"He didn't particularly encourage me to pursue the three-three program," Gerald says, "but once I decided on law school, we both thought it might be good to give it a try. So after my sophomore year, Professor Sizemore advised me as to the courses I'd need to take as a junior, and I got accepted into the program."

Acceptance into the "three-three" program, however, doesn't necessarily ensure automatic entrance into law school, for as Gerald explains, "I still had to go through the regular admission process."

The elder Roach, a 1955 graduate of the School of Law, agrees that he had little influence on his son's decision, but adds that it wasn't really required.

"Gerald grew up in a Wake Forest atmosphere," he says, "and I think that environment had a lot to do with his decision. As for the three-year program, I thought he had the maturity to go without his last year of undergraduate school. Some would want that last year, but he knew what he wanted, just as I had."

First year student John Gardner, a 1981 graduate of Wake Forest joined older sister Terri, a 1981 graduate of the law school, in following his father's footsteps, and, for John, the choice was not a difficult one.

"I only applied to Wake Forest," he says, "so if I hadn't been accepted here I would have been in trouble." John cites Wake's traditional emphasis on North Carolina law as being a factor he considered. "I want to practice in North Carolina," he says.

Though admitting to being "delighted" with his son's decision, the elder Gardner questions whether North Carolina law is still emphasized at his alma mater.

"We were taught the majority rule, the minority rule, and the North Carolina rule," he says. "The professors made sure we learned North Carolina law, but now it seems like we're trying to be more of a regional school."

Still, Gardner says he feels that Wake Forest provides certain advantages. "Wake certainly offers a strong education," he says, "and I'd say that most students who graduate from there should do well in life,



although I am getting a little bit concerned about the \$600 rise in tuition.

A 1956 graduate of the School of Law, Gardner was a member of the last class to graduate from the old Wake County campus. "But I took the bar review at the new campus," he says, "so I have some warmth for the new place. But I imagine things are quite different. We had 25 members in my class, with only one female. Lee was at the height of his strength, and Timberlake was there one year. They were two excellent professors."

Yet another father-son connection involves William A. Hough, a 1952 graduate of the School of Law and currently an assistant district attorney from Robeson County, and his son Bill, a first-year student who graduated from Wake Forest in 1981. Bill, who was accepted at Pepperdine, Campbell, and Wake, says he never felt a great deal of paternal influence. "He was excited when I got in," Bill says, "but he never put any pressure on me. I'd been here four years, so I already felt comfortable here."

The elder Hough agrees with Bill's assessment of their discussions. "I don't think I influenced him that much," he says. "I know I never put it in a demanding way. But I think Bill was only interested in Wake anyway."

The final member of the group is Everette Murphrey, another first-year student and 1981 graduate of Wake Forest. Everette, whose father W.E. (Doc) Murphrey III is District Attorney from Halifax County and occasionally an impromptu cheerleader at Wake Forest football games cites his familiarity with the school as having more of an impact on his decision than any paternal influence.

"He never really said much about it," Everette says, "but I guess he thought it would be nice for me to come here, instead of going to some place like Carolina."

The elder Murphrey, who in 1957 was a member of the first graduating class from the current site, puts it a bit more plainly. "He could go any place in the world," he says, "but I'd pay his way at Wake Forest!" More seriously, "Doc" explains his preference towards Wake. "If he was going to practice in North Carolina, I wanted him to go to Wake Forest," he says. "They traditionally teach the best North Carolina law."

And, by the way, "Doc's" support of his alma mater is still evident on certain football Saturdays, "I still lead cheers, but I'm not a cheerleader," he says. "I'm more of an 'improvise cheerleader'. You could describe me as being loud as hell. I guess the Lord just blessed me with vocal chords!"

## Class Notes

### 1928

**Charles Coleman Horn** celebrates his golden anniversary in the practice of law this year. We congratulate him for this feat.

We are sorry to announce the death of **George Edward Montague** on October 25, 1981. He was a member of the first golf team, the half-century club and the President's club.

### 1934

**C. Woodrow Teague** married Julia Brent Atwater on July 25, 1980. He says his professional plans are "to practice law until [he] grows senile".

**James E. Tucker** (39), is now a partner in the law firm of Hunton & Williams with offices in the Branch Banking and Trust Company Bldg., 333 Fayetteville Street Mall, P.O. Box 109, Raleigh, N.C. 27602.

### 1937

**Joe B. Pittman** is enjoying retirement by traveling with the football and basketball teams to Japan, Houston, and New Orleans. He also enjoys playing basketball and tennis at the YMCA at least four days a week and does not plan to play golf until his 85th birthday.

### 1939

**James E. Tucker** is now a partner in the law firm of Hunton & Williams with offices in the Branch Banking and Trust Company Bldg., 333 Fayetteville Street Mall, P.O. Box 109, Raleigh, N.C. 27602.

### 1940

**Benjamin Carlin LL.B.** died September 23, 1974. From 1957-1974, he was Professor of Law at Wayne State University Law School.

### 1950

**Stanley James Corne** and son Ray Garrison Corne (77) inform us of a change in firm name to Corne, Pitts, Corne & Grant.

### 1951

**Robert B. Broughton** was named (June 15, 1981) General Counsel for N.C. Farm Bureau Federation, N.C. Farm Bureau Mutual Insurance Company and Associates.

**John R. B. Mathis** has retired from the Air Force and is now working as a Deputy Attorney General in Raleigh.

### 1953

**Elmer W. Raper** was admitted to the N.C. Bar in September 1953. The following January he joined the F.B.I. as a special agent. He was admitted to U.S. Supreme Court October 12, 1970. Mr. Raper retired from the F.B.I. in 1979, was admitted to practice law in Virginia in 1980 and is currently the Inspector and legal advisor for the Chesapeake Sheriff's Department.

## 1961

As of January 1, 1981 **William W. Aycock Jr.**, has opened his own office as a sole practitioner in Tarboro, N.C.

**Walter Eugene Johnston, III**, was elected to the U.S. House of Representatives in November of 1980.

## 1963

Engaged in private practice in Raleigh, N.C. **Fred G. Morrison, Jr.** also serves as development consultant for the Raleigh-based Child Watch, Inc., a non-profit corporation established to serve children with special needs in North Carolina.

## 1964

**Bob W. Bowers** was elected Rotary Club President in 1980. He served as President of Davidson City Young Democrats in 1970 and the N.C. Bar Association's Courts and Civil Litigation Committee from 1974-77. He is now a senior partner in Stoner, Bowers & Grey and informs us that daughter Miranda will be graduating from Meredith this year and son Jeff from Lexington Senior High School.

**Sidney S. Eagles, Jr.** practices law in Raleigh as a partner in the firm of Eagles, Hafer and Hall. Their offices are at 336 Fayetteville Street Mall in Raleigh. Eagles managed the 1981 re-election campaign for Senator Robert Morgan. Eagles is also a candidate for Judge of the North Carolina Court of Appeals in the spring 1982 Democratic Primary. He is seeking the seat being vacated by Judge Robert Martin of High Point.

## 1965

**Ellis M. Aycock** opened his own law office on June 1, 1981 in Morganton, N.C. He has a general practice.

**Alfred J. Onorato** was an assistant prosecutor from 1969-1978. Since 1978 he has been a member of the Connecticut House of Representatives for the 9th district, (Vice Chairman: Judiciary Committee; Member: Public Safety Committee).

## 1966

**William M. Mote** has served as President of the Winchester City Council, and President of the Winchester-Frederick County Bar Association.

## 1967

**Larry William Pitts** informs us of a change in firm name to Corne, Pitts, Corne & Grant.

## 1968

**Donald L. Dotsan** was named by President Reagan on April 17, 1981 to be assistant secretary of labor for labor-management relations. In this position he has overall responsibility for the Labor Department's labor-management relations policies and activities. He also serves as administrator of the department's Labor-Management Services Administration.

**Carroll Harden Legget** served as Deputy Attorney General for the State of North Carolina from 1969-1975. From 1975-1981 he was U.S. Senator Robert Morgan's Administrative Assistant. He was recently appointed vice-president of the Hannaford Company, Inc., which does public affairs work for both domestic and international clients, including the Republic of China (Taiwan).

## 1969

**James C. Gaulden, Jr.** has withdrawn from the firm of Nickerson & Gaulden P.C., and is now engaged in general practice at 5730 Glenridge Drive, N.C., Suite 100, Atlanta, Georgia 30328.

**David V. Liner** and **Zachary T. Bynum III**, formed a partnership effective June 1, 1981. Their address is 108 West Third Street, Winston-Salem, N.C. 27101.

## 1970

**Harry H. Clendenin III** has informed us of a "recent" addition to his family, Hal, born November 17, 1979.

## 1971

**Paul H. Livingston Jr.** formerly with Adams, Kleemier, Hogen, Hannah & Fouts and **Stephen C. Hassenfelt** (76) formerly with Smith, Moore, Smith, Schell & Hunter announce the formation of Livingston & Hassenfelt, P.A. located at Suite 1520 Wachovia Bldg., Greensboro, N.C.

## 1972

**Charles J. Alexander, II** and **Robert D. Hinshaw** (77) are partners in the firm Alexander and Hinshaw. **T. Lawson Newton** (81) has joined them as an associate and they are currently in the process of renovating the old Stanley Simmons Shoe Store at 418 North Trade Street which will become their offices on or about January 1, 1982.

## 1973

**Alfred Adams** is the counselor of the Real Property section for the N.C. Bar Association and has been since 1979. He is also the author and instructor of the real property portion of the Bar Associations Bar Review Course since 1981. Furthermore in 1981 he was a speaker at the Real Property Section of the N.C. Bar Associations annual meeting in Asheville.

**Joseph B. Cheshire V**, is currently practicing in Raleigh and is a partner in the firm of Cheshire, Manning & Parker at 133 Fayetteville Street Mall, Raleigh, N.C. 27602.



A partner in the Huntsville, Alabama firm of Foley, Rodenhauser & Tuggle, P.C., **James R. Foley** was elected president last year of the Southeastern Association of Legal Clinics, a group of legal clinic operators in Alabama, Tennessee, North Carolina, and Kentucky.

**W. Riley Hollingsworth** is currently Assistant Chief of the Compliance Division, Federal Communication Commission, Washington, D.C.

His business taking him regularly to Naples, Rotterdam and London, **Robert H. Swennes II** is presently serving as counsel, Military Sealift Command, Europe in Breinerhaven, Germany. Robert, his wife, and their three children live in a small German town, Laugen, near the North Sea.

## 1974

**Charles R. Brewer** was sworn in as United States Attorney for the Western District of North Carolina on November 13, 1981. He and his wife, Susan, and their three children, Emily, age 5, Sarah, age 3, and Melissa, age 3 months, are now residing in Asheville, N.C.

**James L. Core** is presently a Trust Officer in Marketing for Personal Trust and Employee Benefits with the Commerce Bank of Kansas City, N.A. His business address is 922 Walnut Street, Kansas City, MO. 64141.

**William H. Freeman** is running unopposed in the 1982 elections as Resident Superior Court Judge. He was originally appointed to this seat in 1981 by Governor Hunt. Before that Mr. Freeman served as District Court Judge in the 21st Judicial District and as a Special Superior Court Judge.

## 1975

**James F. Bailey** has informed us that his wife, Kristin, recently gave birth to a daughter Lauren Elizabeth. He is currently employed by Howard M. Berg & Associates, P.A., P.O. Box 33, Wilmington, DE 19899.

Having left the District Attorney's office serving Rockingham and Caswell counties in January 1982, **Danny G. Higgins**, is attending Southeastern Baptist Theological Seminary in Wake Forest, N.C., to study for a Master of Divinity degree. Danny's intention is to enter the pastoral ministry.

**John E. Peterson, Jr.** and **Gerald W. Wilson**, are pleased to announce the opening of a second office at 311 Oak Avenue in Spruce Pine, N.C. in 1981. They still retain their office in Bakersville, N.C.

## 1976

**A. Michael Barker** sends us news of the birth of a son, Adam Elliot Barker on October 17, 1977. Mr. Barker recently became a partner in the firm of Kaplan, Goldberg & Gorny, P.A. in April 1981. The firm is located in Atlantic City, New Jersey.

**George T. Fuller** has been appointed as District Court Judge for the 22nd Judicial District and plans to file as a candidate in the 1982 Democratic primary to succeed himself. He also announces the birth of a daughter Emily West Fuller; October 23, 1981.

**Resa Harris** appointed by Governor Jim Hunt to District Court Judgeship of the 26th Judicial District in Mecklenburg County, Charlotte, N.C.

**David K. Haynes** was married to the former Donna Blackwell of McKinney, Texas on May 23, 1981. Assigned as Chief Felony Prosecutor to 219th District on August 1, 1981.

Besides maintaining his practice here in Winston-Salem, **Jack E. Ruby**, is an adjunct professor at the Babcock School of Management at Wake Forest teaching labor relations in the executive MBA program. Jack also recently published a book, entitled **Labor Law-The Law in North Carolina**.

Having moved his practice from Winston-Salem to Jefferson in 1979, **John P. Sisland** (76) has added an associate attorney to his office, Grandy Loron. John's address is P.O. Box 275, Jefferson, N.C. 28640.

**Linda Ekstron Stanley** has just been appointed to the 11-member California State Bar Committee of Bar Examiners.

## 1977

**Nancy Barnhill** was married on June 14, 1981, to the Honorable E. Burt Aycock, Jr., District Court Judge, Third Judicial District. Since graduation she has been working as an assistant district attorney in the Third Judicial District. Nancy practices and lives in Greenville, N.C., at 116 Osceola Drive, 27834.

**James H. Cooke, Jr.**, and **Dale D. Glendening, Jr.**, (76), have formed a professional association in Fayetteville, N.C.

Appointed by Governor Hunt to the position of District Court Judge for the 25th Judicial District, **Robert A. Mullimax** assumed his new duties June 1, 1981.

**Ray Garrison Corne** — see Stanley James Corne ('50).

**Will Creasman**, in January of 1981, was named head of the Legal Department for Blue Bell Europe. This headquarters is responsible for coordinating the manufacture and sale of "WRANGLER" clothes (as well as other Blue Bell labels.) The Creasmans' have two children.

**L. Michael Dodd**, became a partner in the firm of **Dimmock and Reagon** of Raleigh in 1982.

**Kathleen Ann Gray** is presently an associate with the Lancaster, Pennsylvania firm of Barley, Synder, Cooper & Barber. She is also Chairman of Delivery of Legal Services Committee of the Lancaster County Bar Association, which supervises operation of Lancaster County's Lawyer Referral Service.

**Steven A. Grossman** has been a partner in the firm Forbie & Grossman of Kannapolis, N.C. since January 1, 1979. He has two children, Julia Amanda and Rachel Elizabeth.

**Pamela A. Jamarik** has received a promotion at Southern Railway in Washington, D.C. Her current title is Solicitor.

**Julia Lambeth** continues her work as an attorney for E.I. du Pont de Nemours and Company, Environmental Law Division and is now specializing in the field of Occupational Safety and Health. In May 1980, Judy married John C. Phillips, Jr. (Jack) who is an attorney engaged in private practice in Wilmington, Delaware.

On October 1, 1981, **Paul Rush Mitchell** was discharged from active duty in the Marine Corps as a Captain and joined **Garry W. Frank** in practice in Lexington. He and Garry also opened an office in Denton as of January 1, 1982.

Following graduation, **J. Lloyd Nault, III**, was in private practice in Atlanta. In September, 1980, he became corporate counsel with Southern Bell Telephone and Telegraph at 666 N.W. 79th Avenue, Room 680, Miami, Florida 33126.

A full partner in the law firm of Pollock, Fullenwider, Cunningham & Patterson, P.A., **Sandy G. Patterson** (77) (formerly Sandy G. Pittman) was married to Linwood D. Patterson, Jr., on August 23, 1980. Sandy is also proud to announce the birth of a daughter, Nicole Christine, on August 26, 1981.

Formerly law clerk to the Honorable Hiram H. Ward, U.S. District Judge for the Middle District of North Carolina, **Leon E. Porter, Jr.** is currently an associate with Petree, Stockton, Robinson, Vaughn, Glaze & Maready of Winston-Salem. He is also proud to announce the birth of a son, William Markland, on April 17, 1981.

On October of 1981 **Mark S. Thomas** completed three years' active duty as a prosecutor for the United States Army Jag Corps. Mark has returned to North Carolina where he is now practicing with the Raleigh firm of Maupin, Taylor & Ellis, P.A.

## 1978

**Stephen D. Coggine** is pleased to announce that he is now associated with the firm of Rogers & Harris of Raleigh, 1033 Dresser Court. Stephen came to Rogers & Harris after a clerkship with Judge Mark Dupree at Federal Court in Raleigh and an associateship with Thorp, Anderson and Slifkin.

**David R. Godfrey** is now a partner in the Apex, North Carolina firm of Savage and Godfrey.

Resigning after working as an Assistant State's Attorney for three years for Adams County, Illinois, **Thomas K. Leeper** (78) is presently engaged in private practice at 522 Vermont Street, Brinks Bldg., Suite 4, Quincy, IL 62301 and also a public defender.

## 1979

**R. Stewart Barroll** is Co-Chairman of the Law Day Committee, Wicomico County Bar Association for 1982. He is also the current Scouting Coordinator and Chairman of the Post Committee for Wilcomico County Law Explorer Post, Boy Scouts of America.

**Terrie A. Davis**, has changed firms and is now with Allman, Spry, Humphreys and Armentrout, P.O. Box 593, Winston-Salem, N.C. 27101.

Having served as a Special Assistant to the Deputy Commissioner of Labor, N.C. Department of Labor, **Kevin Eddinger** is presently Staff Counsel for the N.C. Department of Agriculture in Raleigh.

Currently a Special Assistant U.S. Attorney working out of the office of the Staff Judge Advocate in Fort Hood, Texas, **Franklin S. Hancock** will be moving in early summer of 1982 to the U.S. Army Claims Service near Washington, D.C. He will become a Liasian officer for a several-state jurisdiction, probably the Southwest.

**Thomas C. McGraw** is currently in his third year as an associate at Coke & Coke in Dallas, Texas, where he has been practicing as a litigation attorney.

**H. W. Pat Paschal, Jr.**, formerly with the Greenville County Public Defender's office wishes to announce the opening of his general practice of law with his office located at 650 E. Washington Street, Greenville, S.C. 29601.

Formerly an associate with Evans & Dixon, St. Louis, **D. Raymond Perry** has recently become an associate of Moser, Marsalek, Carpenter, Cleary, Jaeckel & Keavoy, St. Louis. His address is 300 Pierce Bldg., St. Louis, MO 63102.

**Donnie R. Taylor** has informed us that his wife, Lois, gave birth to a daughter, Melanie Leigh, on June 16, 1981. He and **Mitchell S. McLean** recently formed a partnership to engage in the general practice of law.

**Don Vaughan** has been named Vice President — Government Affairs for the Stedman Corporation, Asheboro, N.C., in charge of Washington and North Carolina operations. His residence is 600 Mayflower Drive, Greensboro, N.C. 27403.

Having opened his own practice in Gibsonville, N.C., **James F. Walker's** present business address is P.O. Box 223, Gibsonville 27249.

## 1980

**G. Less Burke**, has left the firm of Vernon, Vernon, Wooten, Brown and Andrews in Burlington, North Carolina to join the Southern Pines firm of Brown, Holshouser and Pate effective January 1, 1982.

Having worked for the Winston-Salem firm of Yokley and Teeter for a year following graduation, **Lynn P. Burleson** has taken a position as an assistant District Attorney here in Winston-Salem for the 21st Judicial District.

**Sally Foster** recently began working for British Aerospace, Inc. She is responsible for overseeing of title transfer, clearing customs, etc.





Judge Helms visits with President Scales and Dean Scarlett.

## Judge Helms Is Honored

Judge Fred Helms ('22) of Charlotte has played a vital role in that city's growth, and he has earned wide respect in the legal profession. He has built a reputation as one of the area's finest defense lawyers.

On February 8, friends and colleagues of Judge Helms honored him at a dinner marking the establishment of the Fred Helms Scholarship in the School of Law.

Judge Helms, who is 86 and a Union County native, has practiced law in Charlotte for 60 years. The founder and senior partner in the firm of Helms, Mulliss, and Johnston, he helped guide Charlotte through the racial turbulence of the 1950's and was instrumental in creating Charlotte's school desegregation plan, which is recognized as one of the most equitable and smoothly run in the country. In addition, Judge Helms led Charlotte's first

Community Chest campaign as well as the efforts to build Memorial Stadium and Charlotte Memorial Hospital. He is a founding member of Myers Park Baptist Church.

His law firm has also been influential in Charlotte and the surrounding area. Federal Judge James B. McMillan is a former member of the firm, and three partners have served as president of United Community Services.

Judge Helms' illustrious career inspired several of his friends to create the Fred Helms Scholarship. Those who wish to contribute to the fund should mail their contributions to Julius Corpening, Office of Development, 7227 Reynolda Station, Winston-Salem, 27109, or contact Larry Dagenhart in the law firms of Helms, Mulliss, and Johnston.

# Changes of Address

*The following persons notified the **Jurist** of address changes. We are pleased to furnish our readers with this information. We encourage all alumni to notify us about important events which we will make every effort to note in the spring issue.*

## Germany

Brussels, BELGIUM

**Creasman**, Will (77)  
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## Alabama

Birmingham, AL  
**Zezulka**, Kenneth H. (77)  
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Huntsville, AL  
**Foley**, James R. (73)  
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Tuscaloosa, AL  
**Hicks**, III, Gary M.  
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## Alaska

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**Wall**, Delinda Lee (77)  
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## Arkansas

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**Coplin**, Barry E. (76)  
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## California

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**Ash**, John D. (78)  
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**Hodges**, Warren C. (77)  
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**Huff**, Stephen Edward (78)  
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**Long**, Joe O'Neal  
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## Pennsylvania

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Spence, Custer, Saylor, Wolfe  
Rose  
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## South Carolina

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# Changes of Address

---

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## Vermont

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# 1981 Graduates

---

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